INSAS CREDIT & LEASING SDN BHD & ORS

v.

KERJAJADI SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
MOHD GHAZALI JCA
[CIVIL SUIT NO: D1-22-1737-1998]
24 FEBRUARY 2003

CIVIL PROCEDURE: *Particulars - Further and better particulars - Whether particulars sought for relevant in pleadings - Whether particulars requested were matters of evidence - Whether particulars were within defendants' knowledge - Whether pleadings vague and prejudicial to defendants*

The plaintiffs in para. 35 of their statement of claim averred that the defendants had colluded and or/conspired to gain control of the first defendant and committed fraud on the plaintiffs. The fifth, sixth and ninth defendants ('the defendants') denied the allegations contained therein and contended that the plaintiffs had not laid down the particulars of the said allegations, thereby prejudicing them. Subsequently the plaintiffs amended their statement of claim by inserting para. 35A. The defendants then applied for further and better particulars regarding the amended paragraph but the senior assistant registrar dismissed their application. Hence, the defendants appealed.

The issues for determination were: (1) whether the plaintiffs had given sufficient particulars and the occurrence of the events which are material facts had been pleaded; (2) whether the defendants' application for further and better particulars *ie* the dates that the alleged wrongful acts took place a relevant particular in the pleadings and (3) whether the pleadings were vague and would prejudice the defendants in preparing for trial.

Held:

[1] The plaintiffs were merely complying with O. 18. r. 12 of the Rules of the High Court 1980 when they added the particulars contained therein as a consequent of the averments of collusion and/or conspiracy and fraud found in para. 35. By looking at para. 35A of the statement of claim, the plaintiffs had given sufficient particulars for the defendants to understand the nature of the case against them. Thus, the occurrence of the events which were material facts had been pleaded. (p 249 d-e)

[2] At the trial the plaintiffs should prove what they alleged in their pleadings and the dates when the alleged wrongful acts took place would be a subject of evidence rather than pleadings. Dates were not a relevant particular in the pleadings. The wrongful acts alleged and the particulars in relation thereto as contained in the said para. 35A would denote that it was the plaintiffs' stand that the defendants were working together over a period of time to frustrate the agreement between the two parties. A request for further and better particulars *viz* the specific dates when the collusion and/or conspiracy and fraud took place would be unreasonable. (p 249 f-g)

[3] The particulars sought for by the defendants relate to evidence and not to facts. They would seem to be matters within the knowledge of the defendants. They could not contend that the pleadings were vague and would prejudice their goodselves in preparing for the trial. On the whole, as it were a matter of evidence, that would be for the parties to present before the judge at trial. (p 250 b-c & h)

[Appeal dismissed.]

Case(s) referred to:
Batcha Ammal v. Ponnachi [1965] 2 MLJ 43 ***(refd)***
Lim Kee Tak v. Lim Kee Tian [1987] 2 MLJ 528 ***(refd)***
Skrine & Co v. MBf Capital Bhd & Anor [1998] 3 CLJ 432 CA ***(refd)***
Thorp v. Holdsworth [1876] 3 Ch D 637 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 18 rr. 7(1), 12(1), (3), (4)

For the appellants - Vijay Kumar; M/s Kumar Jaspal Quah & Aisah
For the respondents - Dinesh Bhaskaran; M/s Shearn Delamore & Co

[The 5th, 6th & 9th defendants have appealed vide Civil Appeal No: W-02-225-03]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Ghazali JCA:
This is an appeal to the judge in chambers against the decision of the learned senior assistant registrar who dismissed the 5th, 6th and 9th defendants' application for further and better particulars consequent to an amendment made by the plaintiffs to their statement of claim. Basically this is an appeal against the exercise of discretion.

The background leading to the plaintiffs' claim is as follows:

(1) As at 30 November 1997, one Har Chong Chee and Ch'ng Hong owed the 1st plaintiff (hereafter referred to as "the 1st plaintiff's debtors") a sum of money amounting to RM61,129,097.08 arising from a credit facility extended to them by the 1st plaintiff for the purpose of trading in shares. On the request of the 1st plaintiff's debtors, the 1st plaintiff agreed not to sell shares which were deposited with them by the 1st plaintiff's debtors as security for the credit facility on condition that the 1st plaintiff's debtors deposit further additional securities to maintain the approved margin of finance.

(2) As at 30 November 1997, the said Har Chong Chee and Ch'ng Hong together with one Ch'ng Ping Teong, one Kong Voon Sin and a company named Kencana Jaguh Sdn Bhd owed M&A Securities Sdn Bhd (hereafter referred to as "the M&A debtors") which is an associate company of the 1st plaintiff a sum of money amounting to RM51,535,440.81 arising from a credit facility extended to them by M&A Securities Sdn Bhd for the purpose of trading in shares. On the request of the M&A debtors, M&A Securities Sdn Bhd agreed not to sell shares which were deposited with them by the M&A debtors as security for the credit facility on condition that the M&A debtors deposit further additional securities to maintain the approved margin of finance.

(3) At the material time, the 3rd and 4th defendants were the directors and shareholders of the 2nd defendant whilst the 2nd defendant owned the total issued and paid-up capital of the 1st defendant amounting to 3 million shares of RM1 per share. The 3rd and 4th defendants were the only directors and shareholders of the 1st defendant.

(4) At the material time, the 1st defendant was the legal and registered proprietor of a piece of land held under HS(D) 42377 PT No. 38271, District of Klang measuring 46.5 acres and categorised for industrial use (hereafter referred to as "the said land") and on the request of the 1st plaintiff's debtors, the 1st to the 4th defendants agreed to do, *inter alia*, the following:

(a) to create a lien in favour of the 1st plaintiff by way of the creation of a lienholder's caveat on the said land and by depositing the title with the 1st plaintiff;

(b) to grant the 1st plaintiff a limited form of power of attorney in respect of the said land;

(c) to provide certain warranties, guarantees and indemnities including the following:

(i) that they will not increase, reduce or make other alteration to the authorised or issued share capital of the 1st and 2nd defendants including the grant of any option or right over any share in their share capital whether issued or unissued without the consent in writing of the 1st plaintiff;

(ii) that they will not sell, transfer or dispose any part of their undertakings, assets or property or purchase, sell, transfer or dispose any real property or any interest therein without the consent in writing of the 1st plaintiff;

(iii) that they will not make any changes to the board of directors of the 1st and 2nd defendants without the consent in writing of the 1st plaintiff;

(d) that they will execute or cause the 1st plaintiff's directors and/or its secretaries and/or its auditors and/or other person/s connected with the 1st defendant to execute all documents, resolutions, resignations and other papers deemed necessary by the 1st plaintiff.

(5) Simultaneously, at the request of the 1st plaintiff's debtors and as further and additional security to the 1st plaintiff to secure the repayment of the debt to the 1st plaintiff, the 2nd defendant agreed to provide the said further and additional security to the 1st plaintiff by way of, *inter alia*, the following:

(a) to grant unto the 1st plaintiff a limited form of power of attorney in respect of all the issued and paid-up shares in the 1st defendant;

(b) to execute the transfer of the 1st defendant's shares and deposit the same with the 1st plaintiff and/or its nominee/s and to execute or cause its directors and/or its secretaries and/or its auditors and/or other person/s connected with the 2nd defendant to execute all documents, resolutions, resignations and other papers deemed necessary by the 1st plaintiff;

(c) to provide certain warranties, guarantees and indemnities.

(6) Simultaneously, at the request of the 1st plaintiff's debtors and as further and additional security to the 1st plaintiff to secure the repayment of the debt to the 1st plaintiff, the shareholders of the 2nd defendant, ie, the 3rd

and 4th defendants agreed to provide further and additional security to the 1st plaintiff by way of, *inter alia*, the following:

(a) a limited form of power of attorney in respect of all the issued and paid-up shares in the 2nd defendant;

(b) to execute the transfer of the shares in the 2nd defendant and deposit the same with the 1st plaintiff and/or its nominee/s and to execute or cause its directors and/or its secretaries and/or its auditors and/or other person/s connected with the 2nd defendant to execute all documents, resolutions, resignations and other papers deemed necessary by the 1st plaintiff;

(c) to provide certain warranties, guarantees and indemnities.

(7) At the request of the M&A debtors and as further and additional security to M&A Securities Sdn Bhd to secure the repayment of the debt to M&A Securities Sdn Bhd, the 1st and 2nd defendants and the shareholders of the 2nd defendant agreed that they shall cause the 1st and 2nd defendant respectively to provide corporate guarantees in favour of M&A Securities Sdn Bhd.

(8) The above terms and conditions agreed to were incorporated into an agreement executed on 30 December 1997 (hereafter referred to as "the said agreement") between the following persons:

(i) M&A Securities Sdn Bhd;

(ii) the 1st plaintiff;

(iii) Ch'ng Ping Teong;

(iv) Kong Voon Sin;

(v) Har Cheong Chee;

(vi) Ch'ng Hong;

(vii) Kencana Jaguh Sdn Bhd;

(viii) the 1st defendant;

(ix) the 2nd defendant;

(x) the 3rd defendant; and

(xi) the 4th defendant.

Except for the said Kong Voon Sin who was overseas at the material time, all the above-mentioned persons signed the said agreement. It is the plaintiff's case that the said Kong Voon Sin acknowledged his agreement to the said agreement by letter dated 8 December 1997.

(9) As agreed, *vide* letter dated 10 December 1997, the 2nd defendant forwarded certain documents to the legal firm of M/s Kean Chye & Sivalingam which were acting for the 1st plaintiff including the following:

(a) undated circular resolutions of the board of directors of the 1st and 2nd defendants and signed by the 3rd and 4th defendants approving, *inter alia*, the following:

(i) the transfer of interest in the said land to the 1st plaintiff;

(ii) the appointment of the 1st plaintiff's nominees to the board of directors of the 1st and 2nd defendants;

(iii) the transfer of all the issued and paid-up shares of the 1st and 2nd defendants to the 1st plaintiff and/or its nominees;

(iv) the resignation of the secretary and auditor of the 1st and 2nd defendants;

(v) the granting of the respective power of attorneys to the 1st plaintiff;

(b) undated resignation letters as directors of the 1st and 2nd defendants signed by the 3rd and 4th defendants;

(c) the original share certificates issued by the 1st and 2nd defendants and undated share transfer forms signed by the 3rd and 4th defendants;

(d) the company seals of the 1st and 2nd defendants;

(hereafter referred to as "the said documents").

The events following the execution of the said agreement on 30 December 1997 are as follows:

(1) *Vide* letter dated 19 January 1998 the legal firm of M/s Kumar Jaspal Quah & Aishah on behalf of the 1st and 2nd defendants demanded the return of the said documents including the title to the said land from the 1st plaintiff on the ground that the said agreement cannot be enforced as the said Kong Voon Sin was not a signatory to the same.

(2) As it is the stand of the 1st plaintiff that the agreement is enforceable on the ground that the said Kong Voon Sin is not one of the 1st plaintiff's debtors and furthermore has nothing to do with their rights under the said

agreement, the 1st plaintiff took the following steps to protect the same, namely:

(a) on 10 February 1998 the 1st plaintiff appointed the 2nd to the 4th plaintiffs to the board of directors of the 1st and 2nd defendants;

(b) on 16 March 1998 the 2nd to the 4th plaintiffs appointed one Chow Yet Kuen as company secretary of the 1st and 2nd defendants;

(c) on 23 March 1998 the resignation of the 3rd and 4th defendants from the board of directors of the 1st and 2nd defendants were carried into effect.

(3) However, the 7th and 8th defendants, ie, the respective company secretaries of the 1st and 2nd defendants refused to resign and also refused to forward the companies' documents, records and books despite the requests of the 2nd to the 4th plaintiffs to do so. The 7th and 8th defendants then intimated they do not recognise the 2nd to the 4th plaintiffs as directors of the 1st and 2nd defendants and will accordingly act only upon the instructions of the 3rd and 4th defendants. The 7th defendant also intimated that two additional directors have been appointed to the board of directors of the 1st defendant but refused to reveal their identities.

(4) *Vide* letter dated 5 May 1998 the 7th defendant informed the 2nd to the 4th plaintiffs that she received a notice from the 9th defendant, which is now the owner of 99.97% of the shares of the 1st defendant, to convene an extraordinary general meeting (EGM) of the 1st defendant to remove the 2nd to the 4th plaintiffs from the board of directors and to appoint or confirm the 3rd to the 6th defendants as members of the board. For this purpose the 7th defendant called for a meeting of the board of directors to be held on 13 May 1998.

(5) Solicitors for the 2nd to the 4th plaintiffs responded by informing the 7th defendant *vide* letter dated 12 May 1998 that the proposed calling for the meeting of the board of directors of the 1st defendant is invalid as the 9th defendant is not a shareholder of the same.

(6) Despite the above objection, the meeting of the board of directors went on as scheduled. It was attended by the 3rd to the 6th defendants and it was resolved that the proposed EGM be held on 9 June 1998.

(7) *Vide* letter dated 25 May 1998 the 7th defendant informed solicitors for the 2nd to the 4th plaintiffs that the 5th and 6th defendants were appointed directors of the 1st defendant on 12 January 1998 and that the 9th defendant owns 2,999,000 shares out of the 3 million shares of the

1st defendant. It is the stand of the plaintiffs that at the material time they were never informed of this development.

The complaints of the plaintiffs due to the events discussed above are, *inter alia*, as follows:

(a) the 1st to the 4th defendants have breached the terms of the said agreement;

(b) the 1st to the 8th defendants and/or the 9th defendant have colluded and/or conspired to gain control of the 1st defendant with the intention of getting back the said land;

(c) the 1st to the 8th defendants and/or the 9th defendant have committed fraud on the plaintiffs.

The plaintiffs now fear that the defendants will remove the 2nd to the 4th plaintiffs from the board of directors of the 1st and 2nd defendants and wrest control, deal with the shares and the said land and refuse the plaintiffs access to its documents, records and books. Under the circumstances, the plaintiffs *vide* this action claim for the following reliefs:

(i) a declaration that the appointment of the 2nd to the 4th plaintiffs on 10 February 1998 as directors of the 1st and 2nd defendants is valid;

(ii) a declaration that the resignation of the 3rd and 4th defendants on 23 March 1998 as directors of the 1st and 2nd defendants is valid and that the 3rd and 4th defendants have ceased to be directors of the same;

(iii) an injunction to prevent the 3rd and 4th defendants from acting or holding themselves out as directors of the 1st and 2nd defendants;

(iv) an injunction to prevent the defendants or their agents from acknowledging or accepting the 3rd and 4th defendants as directors of the 1st and 2nd defendants;

(v) a declaration that the appointment of the 5th and 6th defendants as directors of the 1st and 2nd defendants on 12 January 1998 is null and void and that the 5th and 6th defendants are not directors of the same;

(vi) an injunction to prevent the 5th and 6th defendants from acting or holding themselves out as directors of the 1st and 2nd defendants;

(vii) an injunction to prevent the defendants or their agents from acknowledging or accepting the 5th and 6th defendants as directors of the 1st and 2nd defendants;

(viii) a declaration that the transfer of shares of the 1st defendant to the 9th defendant is null and void and that the 9th defendant is not a shareholder of the same;

(ix) a declaration that the notice calling for the EGM dated 2 May 1998 and issued by the 9th defendant is null and void;

(x) an injunction to prevent the 9th defendant or its agents from acting or holding itself out as a shareholder of the 1st defendant;

(xi) an injunction to prevent the defendants or their agents from acknowledging or accepting the 9th defendant as a shareholder of the 1st defendant;

(xii) a declaration that the meeting of the board of directors of the 1st defendant held on 13 May 1998 and any resolution passed therein is null and void;

(xiii) a declaration that the EGM of the 1st defendant held on 9 June 1998 is null and void;

(xiv) an injunction to prevent the defendants from dealing with the said land in any manner;

(xiv) an order that the 7th and 8th defendants forward all documents, records and books of the 1st and 2nd defendants within a day from the date of the order;

(xv) an order that the 7th and 8th defendants do not obstruct the 2nd to the 4th plaintiffs from perusing and taking all documents, records and books of the 1st and 2nd defendants;

(xvi) an order to prevent the 7th and 8th defendants from acting or holding themselves out as company secretaries of the 1st and 2nd defendants;

(xvii) an injunction to prevent the defendants or their agents from acknowledging or accepting the 7th and 8th defendants as company secretaries of the 1st and 2nd defendants;

(xviii) an injunction to prevent the defendants or their agents from dealing with the shares of the 1st and 2nd defendants;

(xix) damages;

(xx) any other relief as the court deems fit.

The writ was filed on 2 June 1998. The defendants subsequently entered appearance and filed their respective defence and counterclaim. The plaintiffs consequently filed their reply and defence to counterclaim. On 25 August 1998

the plaintiffs took out a summons for directions. The suit was fixed for hearing on 10, 11, 12 and 17 November 1998. However, when the matter came up for hearing on 10 November 1998, all parties requested for an adjournment on various grounds. The suit was then fixed for hearing on 12 to 14 April 1999. However, on the request of solicitors for the plaintiffs and with no objections from the defendants, hearing of the matter was once again adjourned. No hearing dates were then fixed and the matter came up a number of times for mention on the request of the parties.

On 3 March 1999 the plaintiffs filed an application to amend their statement of claim (encl. 55). On 7 May 1999 the senior assistant registrar allowed the application as there were no objections from the defendants. The amendments basically relate to the averments of the plaintiffs found in para. 35 of their statement of claim, namely, that the 1st to the 8th defendants and/or the 9th defendant have colluded and/or conspired to gain control of the 1st defendant with the intention of getting back the said land and that the 1st to the 8th defendants and/or the 9th defendant have committed fraud on the plaintiffs. The amendments, from my reading, are clearly particulars which the plaintiffs contend are facts to support the averments made in para. 35. These particulars, *vide* the amendments, are now laid down in the form of para. 35A which can be summarised as follows:

(a) As against the 1st to the 4th defendants:

(i) that the 1st to the 4th defendants were fully aware of their responsibilities under the said agreement and its effect on the 1st defendant and the said land but yet attempted to transfer the shares of the 1st defendant to the 9th defendant and facilitated the appointment of the 5th and 6th defendants as directors of the 1st defendant;

(ii) that the 1st to the 4th defendants were fully aware of the right of the 1st plaintiff under the said agreement to appoint the 2nd to the 4th plaintiffs as directors of the 1st defendant but yet attempted to oust the 2nd to the 4th plaintiffs from the board of directors;

(iii) that the 1st to the 4th defendants facilitated the late filing of documents relating to the transfer of shares in the 1st defendant from the 2nd defendant to the 9th defendant with the Registry of Companies through the 7th and 8th defendants.

(b) As against the 5th, 6th and 9th defendants:

(i) notwithstanding that the 5th, 6th and 9th defendants were aware or should have been aware of the responsibilities of the 1st to the 4th defendants under the said agreement, they still attempted to wrest the shares in the 1st defendant and the said land from the 1st plaintiff and

consequently appointed-the 5th and 6th defendants as directors of the 1st defendant;

(ii) the 5th, 6th and 9th defendants were aware or should have been aware that a portion of the share certificates of the 1st defendant, the title deed to the said land and the said documents are not in the possession of the 1st to the 4th defendants;

(iii) the 5th, 6th and 9th defendants knew or should have known that the 1st plaintiff has lodged a private caveat against the said land on 18 December 1997 which would reveal the 1st plaintiff's interest in the 1st defendant and the said land;

(iv) although the 5th, 6th and 9th defendants knew or ought to have known of the existence of the said agreement and the 1st plaintiff's right under the same to appoint the 2nd to the 4th plaintiffs as directors of the 1st defendant, they attempted to remove the 2nd to the 4th plaintiffs from the board of directors of the 1st defendant;

(v) the 5th, 6th and 9th defendants purchased the shares in the 1st defendant for a consideration of RM4,950,000 whereas the value of the shares and the said land is worth much more than that;

(vi) the 5th, 6th and 9th defendants facilitated the late filing of the documents relating to the transfer of shares in the 1st defendant from the 2nd defendant to the 9th defendant and the appointment of the 5th and 6th defendants as directors of the 1st defendant with the Registry of Companies through the 7th and 8th defendants.

(c) As against the 7th and 8th defendants:

(i) the 7th and 8th defendants were aware or should have been aware of the said agreement and the responsibilities of the 1st to the 4th defendants under the same and consequently should have known that the said documents were forwarded to the 1st plaintiff but in spite of this facilitated the transfer of shares to the 9th defendant and the appointment of the 5th and 6th defendants as directors of the 1st defendant;

(ii) the 7th and 8th defendants delayed the filing of documents relating to the transfer of shares in the 1st defendant from the-the 2nd defendant to the 9th defendant and the appointment of the 5th and 6th defendants as directors of the 1st defendant with the Registry of Companies.

On 18 January 2000 the 5th, 6th and 9th defendants filed an application (encl. 59) praying for further and better particulars in relation to the

amendments as found in para. 35A of the statement of claim. The further and better particulars sought for relate to the following averments, namely:

(a) in relation to the averment that the 1st to the 8th defendants and/or the 9th defendant have colluded and/or conspired to gain control of the 1st defendant with the intention of getting back the said land, the date when the collusion or conspiracy took place and how it took place;

(b) in relation to the averment that the 1st to the 8th defendants and/or the 9th defendant have committed fraud on the plaintiffs, the date when the fraud was committed and the type of fraud that was committed;

(c) in relation to the averment that the 5th, 6th and 9th defendants were aware or should have been aware of the responsibilities of the 1st to the 4th defendants under the said agreement but yet attempted to wrest the shares in the 1st defendant and the said land from the 1st plaintiff and consequently appointed the 5th and 6th defendants as directors of the 1st defendant, the date when the 5th, 6th and 9th defendants were aware or should have been aware;

(d) in relation to the averment that the 5th, 6th and 9th defendants were aware or should have been aware that a portion of the share certificates of the 1st defendant, the title deed to the said land and the said documents are not in the possession of the 1st to the 4th defendants, the date when the 5th, 6th and 9th defendants were aware or should have been aware;

(e) in relation to the averment that the 5th, 6th and 9th defendants knew or should have known that the 1st plaintiff has lodged a private caveat against the said land on 18 December 1997 which would reveal the 1st plaintiff's interest in the 1st defendant and the said land, the date when the 5th, 6th and 9th defendants knew or should have known;

(f) in relation to the averment that the 5th, 6th and 9th defendants knew or ought to have known of the existence of the said agreement and the 1st plaintiff's right under the same to appoint the 2nd to the 4th plaintiffs as directors of the 1st defendant but yet attempted to remove the 2nd to the 4th plaintiffs from the board of directors of the same, the date, when the 5th, 6th and 9th defendants knew or ought to have known;

(g) in relation to the averment that the 5th, 6th and 9th defendants purchased the shares in the 1st defendant for a consideration of RM4,950,000 whereas the value of the shares and said land is worth much more than that, the date when the value of the shares and the said land is worth more than the said consideration;

(h) in relation to the averment that the 5th, 6th and 9th defendants facilitated the late filing of documents with the Registry of Companies through the 7th and 8th defendants relating to the transfer of shares in the 1st defendant from the 2nd defendant to the 9th defendant and the appointment of the 5th and 6th defendants, the date, what can be facilitated and how it can be facilitated.

In the same application (encl. 59), the 5th, 6th and 9th defendants also applied that the proceedings be stayed until the plaintiffs furnish the further and better particulars requested for and that the costs of the application be borne by the plaintiffs. The learned senior assistant registrar dismissed the application of the 5th, 6th and 9th defendants and against that decision they appealed to the judge in chambers.

In his written submission, counsel for the 5th, 6th and 9th defendants pointed out that the application is made pursuant to O. 18 r. 12(3) of the Rules of the High Court 1980 (the Rules) which provides that all pleadings including the statement of claim must contain necessary particulars. It read:

> The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his order to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

According to counsel, the intention of this rule is to prevent "surprise" at trial and to support his contention cited the case of *Lim Kee Tak v. Lim Kee Tian* [1987] 2 MLJ 528. Counsel argued the rule is also to enable the parties to prepare for what evidence they need to produce at trial and cited the case of *Thorp v. Holdsworth* [1876] 3 Ch D 637.

On the charge of conspiracy, counsel pointed out the plaintiffs' claim that the defendants conspired and the further and better particulars sought for were pertaining to the so-called conspiracy. He argued that the plaintiffs should be able to state what facts they are relying upon. The defendants need to know the case they have to meet at the trial and prepare rebuttal evidence. The relevant witnesses have to be called to prove or disprove the facts the plaintiffs will be relying upon to support their allegation of conspiracy. The defendants will be prejudiced without the particulars sought in preparing for trial as they would not know the nature of the plaintiffs' claim to the alleged conspiracy.

On the charge of fraud counsel pointed out the plaintiffs averred "the behaviour of the defendants ... amount to fraud". The defendants request for particulars is to show what is that behaviour that the plaintiffs are relying upon.

On the question of knowledge counsel contended under O. 18 r. 12(4) of the rules it is clear that when a party alleges as a fact that a person has knowledge of some fact, he must give particulars of the facts he is relying upon to impute such knowledge on the other person's part. It read:

> Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party:
>
> (a) where he alleges knowledge, particulars of the facts on which he relies; and
>
> (b) where he alleges notice, particulars of the notice.

On the issue of the said consideration of RM4,950,000 counsel contended the plaintiffs are claiming that that consideration was inadequate compared to the value of the shares and the said land. The defendants need to prepare valuations and expert evidence for this claim and as such, the dates become relevant in such preparation.

Counsel then urged the court to reverse the decision of the learned senior assistant registrar who had dismissed the application.

In his submission, counsel for the plaintiffs contended it is an established principle of law that a party is only required to plead, in a summary form, the material facts and not the evidence on which he relies. The evidence on which a party relies is only to be produced at trial. To support his contention he cited the case of *Skrine & Co v. MBf Capital Bhd & Anor* [1998] 3 CLJ 432 CA.

Counsel argued the reason why the plaintiffs are resisting the application of the 5th, 6th and 9th defendants is that the application is a "fishing expedition" for evidence and is not a genuine application for further material and necessary facts. He submitted a perusal of the defendants' affidavit filed in support of their application reveals the following:

(i) they have clearly stated they are denying the very allegations of fraud and conspiracy which they claim are pleaded in insufficient detail;

(ii) however, in order for the defendants to deny these allegations, it must follow that they have obtained adequate information from the amended statement of claim for them to take such a firm and unequivocal stand;

(iii) as such, there is no necessity for further and better particulars given that the defendants are fully aware of the stand that they will be taking at the trial of this action, and hence are in a position to plan their defence accordingly.

Counsel argued a perusal of the application itself illustrates the true nature of the defendant's application, namely, the particulars sought for are dates on which the various events occurred. The occurrence of the events are material facts which have been pleaded; however the dates on which the events occurred are matters of evidence which will be adduced at the trial in order to prove the pleaded facts. The detailed facts have already been pleaded in the amended statement of claim and hence further particulars are unnecessary. In the circumstances the plaintiffs pray that the defendants' appeal be dismissed with costs.

From my reading, O. 18 r. 12(3) of the Rules clearly provides the court with a discretion whether to order a party to serve on any other party particulars of any claim. In *Batcha Ammal v. Ponnachi* [1965] 2 MLJ 43, Thompson LP said (at p. 44):

> Now, the question of further and better particulars is essentially a matter of discretion and the object is to ensure that a defendant is informed with reasonable particularity as to the various matters which are alleged against him.

In the instant case the learned senior assistant registrar dismissed this application of the 5th, 6th and 9th defendants made pursuant to the same and from what has been contended above, I cannot see where she has gone wrong with her exercise of such discretion. Order 18 r. 7(1) of the Rules read:

> Subject to the provisions of this rule and rules 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

Before the amendment to the statement of claim was made, as against, *inter alia*, the 5th, 6th and 9th defendants, the plaintiffs averred in para. 35 of the same that they colluded and/or conspired to gain control of the 1st defendant with the intention of getting back the said land and committed fraud on the plaintiffs. From my reading of the statement of claim, no particulars of the said allegations were stated then. In response to the said para. 35, the 1st to the 4th defendants denied the allegations contained therein and contended the plaintiffs have not laid down the particulars of the said allegations. The 5th, 6th and 9th defendants contended that without the particulars of the said allegations they are prejudiced. The 7th and 8th defendants denied the said allegations and contended they were merely acting under instructions. Subsequently the plaintiffs amended their statement of claim by inserting the said para. 35A the contents of which are as discussed earlier.

It is trite that when one alleges collusion and/or conspiracy or fraud, O. 18 r. 12(1) of the Rules require that particulars must be given. Failure to do so would seriously handicap the party making such a claim. Order 18 r. 12(1) read:

> Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words:
>
> (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
>
> (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

From my reading of the said para. 35A of the statement of claim, it is my view that the plaintiffs were merely complying with O. 18 r. 12(1) of the Rules when they added the particulars contained therein as a consequent of the averments of collusion and/or conspiracy and fraud found in the said para. 35 of the same. Looking at para. 35A of the statement of claim, I am satisfied that the plaintiffs have given sufficient particulars for the defendants to understand the nature of the case against them. I would agree with the contention of the plaintiffs that the occurrence of the events which are material facts have been pleaded. What the 5th, 6th and 9th defendants are seeking *vide* this application for further and better particulars are merely the dates when the collusion and/or conspiracy and fraud took place. I cannot see how dates can be a relevant particular in the pleadings under the circumstances. At the trial the plaintiffs have to prove what they have alleged in their pleadings and I would think that the dates when the alleged wrongful acts took place will be a subject of evidence rather than pleadings. I am of the view that the wrongful acts alleged and the particulars in relation thereto as contained in the said para. 35A would denote that it is the plaintiffs' stand that the defendants were working together over a period of time to frustrate the said agreement. A request for further and better particulars, *viz*, the specific dates when the collusion and/or conspiracy and fraud took place would, to me, be unreasonable. Such wrongful acts would normally involve meetings or arrangements between the parties involved over a period of time prior to the commission of such acts and the burden of proving these wrongful acts would be on the shoulders of the plaintiffs. According to *Osborn's Concise Law Dictionary* (8th edn) "collusion" is "the arrangement of two persons, apparently in a hostile position or having conflicting interests, to do some act in order to injure a third person or deceive a court". According to the *Oxford Concise Dictionary* (9th edn) "conspiracy" is "a secret plan to commit a crime or do harm, often for political

ends; a plot" and the word "conspire" means "combine secretly to plan and prepare an unlawful or harmful act". The word "fraud" according to *Osborn's Concise Law Dictionary* is "the obtaining of a material advantage by unfair or unlawful means; it involves the making of a false representation knowingly, or without belief in its truth, or recklessly".

Having considered the application carefully, I would agree with the stand of counsel for the plaintiffs that the particulars sought for relate to evidence and not to facts. They would seem to be matters within the knowledge of the 5th, 6th and 9th defendants. That being the case, I cannot see how they can contend that the pleadings, despite the inclusion of the said para. 35A, can be said to be vague and will prejudice their goodselves in preparing for the trial as they would "not even know the nature of the plaintiffs' claim pertaining to the alleged conspiracy". In relation to the contention of the 5th, 6th and 9th defendants that the date when the consideration for the purchase of shares and the said land is said to be inadequate is a relevant particular as they would "need to prepare valuations and expert evidence and witnesses for that", I cannot see how this can hold water. The 9th defendant has claimed that it now owns 2,999,000 shares out of the three million shares of the 1st defendant. The 1st defendant is the legal and registered proprietor of the said land. As to whether the consideration was adequate for the sale of the said shares of the 1st defendant to the 9th defendant is adequate, surely that would be within the knowledge of the 5th, 6th and 9th defendants. If at all the 9th defendant did purchase the said shares, surely the date when the transfer took place would be within the knowledge of the 5th, 6th and 9th defendants. That date can be gleaned from the share transfer form used for the purchase. Since the 1st defendant owns the said land, surely the price for the said shares would reflect the actual or market value of the said land besides the other assets that the 1st defendant may own and the 9th defendant being the purchaser of the said shares surely would have taken into account the value of the said land before agreeing to the price offered for the said shares. To argue that the defendants would now require to know the date as they would "need to prepare valuations and expert evidence and witnesses for that", to me, is preposterous. No sane person would make such a purchase of shares under the circumstances without getting professional help on its value and to the viability of the company including the existence of encumbrances, if any, on its assets. On the whole, this is a matter of evidence and that would be for the parties to present before the judge at the trial.

I am of the view that the learned senior assistant registrar was right in dismissing the application of the 5th, 6th and 9th defendants. This appeal is dismissed with costs.